

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Rule 71.1)

To:

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7 JAN. 2005

REQU - RECEIVED

Fradelet (NJ)

Date of mailing
(day/month/year) 30.12.2004

Applicant's or agent's file reference
000677-0036

Req 27/01

IMPORTANT NOTIFICATION

International application No.
PCT/CA 03/01496

International filing date (day/month/year)
29.09.2003

Priority date (day/month/year)
27.09.2002

Applicant
C02 SOLUTION INC. et al.

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

Name and mailing address of the international
preliminary examining authority:



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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)



Applicant's or agent's file reference 000677-0036	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEAA16)	
International application No. PCT/CA 03/01496	International filing date (day/month/year) 29.09.2003	Priority date (day/month/year) 27.09.2002
International Patent Classification (IPC) or both national classification and IPC B01D53/62		
Applicant C02 SOLUTION INC. et al.		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 6 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of sheets.

- This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 23.02.2004	Date of completion of this report 30.12.2004
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer de Biasio, A Telephone No. +49 89 2399-8627 

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/CA 03/01496**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17))*):

Description, Pages

1-12 as originally filed

Claims, Numbers

1-22 as originally filed

Drawings, Sheets

1/2-2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2-22
	No: Claims	1
Inventive step (IS)	Yes: Claims	-
	No: Claims	1-22
Industrial applicability (IA)	Yes: Claims	1-22
	No: Claims	-

2. Citations and explanations

see separate sheet

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. WO-A-96/40414 (D1) discloses a process for recycling carbon dioxide emissions from a fossil-fuel power plant (cf p. 19, ll.1-4) into carbonated species (page 9, ll. 2-5; example 2), comprising the steps of:
 - a) combustion of a fossil fuel, thereby generating heat and a hot exhaust gas containing CO₂ (cf page 15, ll. 1-5);
 - b) converting said heat into energy (cf page 15, ll. 1-5);
 - c) cooling said exhaust gas (page 9, ll. 14-17); and
 - d) reducing the amount of CO₂ contained in the cooled exhaust gas by biologically transforming said CO₂ into carbonated species; thereby obtaining a low CO₂ exhaust gas (example 2).

All features of claim 1 appear to be known from D1, thus the subject-matter of claim 1 lacks novelty (Art. 33(2) PCT).

2. Dependent claims 14 do not seem to include additional technical features rendering their subject-matter inventive (Art. 33(3) PCT) over the disclosure of D1.

Cls. 2-4: A.m. step d) is performed in D1 with carbonic anhydrase. Moreover, the separation of carbonates from an aqueous solution by precipitation is well known in the field of treating flue gases from fossil-fuel power plants (cf US-A-6.187.277 (D2), col. 9, ll. 35-43).

Cl. 5: In claim 20 of D1, water is said to be present as a condensed phase in the reactor.

Cl. 6: In claim 19 of D1, the enzyme is immobilized on the surface of beads.

Cls. 7,8: In claim 2 of D1, the enzyme is said to be "solvated", i.e. it seems to be in suspension in a liquid phase. In claim 9 of D1, dependent on claim 2, the enzyme is immobilized at the surface of beads floating on the surface of a fluid phase

Cl. 9: cf. D2, page 9, ll. 8-17.

Cl. 10,11: cf. D2, page 9, ll. 10-15.

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Cl. 12,13: cf. D2, col. 9, ll. 35-43.

Cl. 14: To cool an exhaust gas with a heat exchanger should be trivial and to recycle the removed heat in the a.m. energy conversion process can be considered as a measure a skilled person would consider without exercising any inventiveness.

3. The device of claim 15, if compared to the method of claim 1 further comprises precipitation means suitable for precipitating carbonated species, i.e. it corresponds to the method of claim 2. The precipitating means being defined in a very broad way, the objection of lack of inventive step raised against the method of claim 2 applies also to the subject-matter of claim 15 (Art. 33(3) PCT).
4. The remarks made under item 2. seem to apply also to the additional technical features of dependent claims 16-22. The latter do thus not seem to involve an inventive step (Art. 33(3) PCT).

As far as claim 18 of the present application is concerned, the applicants' attention is drawn to figure 1 of D1.

5. WO-A-98/55210 (D3), cited in the application, describes a bioreactor with carbonic anhydrase to effect the hydration of CO₂ into bicarbonate. The problem of global warming is also mentioned therein, i.e. to apply the method of D3 to flue gases should be obvious. The subject-matter of claim 1 does not appear to be inventive over D3.

Further Remarks:

1. As already mentioned under item V.3., the device of independent claim 15 does not correspond to the method of independent claim 1, as it further includes a precipitation unit. Said precipitation unit should be considered as essential for the device of the present application, but only optional for the method of the present application. Consequently, there seems to be a contradiction as far as essential features as concerned (Art. 6 PCT).
2. In claim 15 biological means for transforming CO₂ into hydrogen ions and carbonate ions are mentioned. It is, however, unclear where these hydrogen ions should come from (Art. 6 PCT). In order to obtain hydrogen ions from CO₂, other chemical species

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comprising H-atoms should be involved. Claim 1 only mentions the formation of carbonate species. There is again a contradiction between claim 1 and claim 15 regarding the essential features.

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